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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,594	12/11/2003	Giora Biran	FIS920030280US1	8195
45094 7590 01/14/2008 HOFFMAN, WARNICK & D'ALESSANDRO LLC 75 STATE ST 14TH FL ALBANY, NY 12207			EXAMINER HARRELL, ROBERT B	
			ART UNIT 2142	PAPER NUMBER
			NOTIFICATION DATE 01/14/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOCommunications@hwdpatents.com
efiplaw@us.ibm.com

Office Action Summary

Application No.

10/733,594

Applicant(s)

BIRAN ET AL.

Examiner

Robert B. Harrell

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003 et al.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>see attached Office Action</u> |

1. Claims 1-20 are presented for examination.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use. That is, subheadings such as "The Protocol" on page 3, for example, is not required, nor is required "A. Environment" as another example.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
 - (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
 - (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
 - (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
 - (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
 - (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
 - (g) BRIEF SUMMARY OF THE INVENTION.
 - (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
 - (i) DETAILED DESCRIPTION OF THE INVENTION.
 - (j) CLAIM OR CLAIMS (commencing on a separate sheet).
 - (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
 - (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).
4. The applicant should always use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors,

general typographical errors, accuracy, assurance of proper use for Trademarks TM, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims (i.e., provide proper antecedent basis for "the" and "said" within each claim). Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 8-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter since such reads on (encompass) software or program per se' (In re Beauregard (CAFC) 35 USPQ2d 1383) and/or transmitted via a transient carrier wave, since such a computer medium is not a computer useable storage medium (MPEP 2106 (New EXAMINATION GUIDELINES FOR COMPUTER-RELATED INVENTIONS)). Even though claims 8-13 are drafted as "A system", the applicant is reminded that an Operating System is software and/or program per se'. Also, since claims 8-13 are drafted in means plus function format, such encompasses the same subject matter to which claims 14-20 encompass (i.e., a computer program product); specifically, a computer program product not actually stored on a computer useable storage medium.

7. The following is a quotation of the second paragraph of 35 U.S.C 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-20 are rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear:

- a) "the CQE"--claim 1[*note "(CQE)" is suggestive language as it is within "(" and ")" to which "TCP" is not*], same holds for other claims such as claim 8 (line 7); but, line 3 of claim 8 is only "(CQ)"[?error? CQE maybe?], and the like for "(WQE)" in claim 2 et seq.;
- b) "the counter"—claim 1[*should be consistent with "reference counter" and thus --the reference counter-- is correct*] also in claim 8 and claim 14 as examples;
- c) "the case"—claim 8 and claim 14 as examples.

9. As to 8 (a-c) above, these are but a few examples of numerous cases where clear antecedent basis are lacking and not an exhausting recital. Any other term(s) or phrase(s) over looked by examiner and not listed above which start with either "the" or "said" and do not have a single proper antecedent basis also is indefinite for the reasons outlined in this paragraph. Also, these are but a few examples where term(s) or phrase(s) are introduced more than once without

adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s). Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent basis for term(s) or phrase(s) which relied upon the introduced term. Failure to correct all existing cases where clear antecedent basis are lacking can be viewed as non-responsive. Nonetheless, should a response yield all claims allowable short *a few* cases where clear antecedent basis are lacking within the claims, a preemptive authorization to enter an examiner's amendment to the record to correct such would accelerate a notice of allowance over a final rejection. Such could be added at the end of an applicant's response with the following statement: "Examiner is hereby authorized, without the need of further contact by examiner, to enter an Examiner's Amendment to correct any cases where antecedent basis are lacking." if the applicant so elects. This does not diminish the applicant's requirement to correct all such cases not so listed in the example few given above nor prohibit any amendments after a notice of allowance by the applicant.

10. The claims are allowable over the art of record since the art of record failed to teach or remotely suggest the invention as defined within the scope of claims 1-20.

11. *A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the data of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Thursday from 5:30 am to 2:00 pm.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell, can be reached on (571) 272-3868. The fax phone number for all papers is (571) 273-8300.

14. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.



ROBERT B. HARRELL
PRIMARY EXAMINER
GROUP 2142